

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAJAMES BRADY, et al.,  
Plaintiffs,

v.

DELOITTE & TOUCHE LLP,  
Defendant.Case No. [08-cv-00177-SI](#)**ORDER DENYING PLAINTIFFS'  
MOTION FOR CLASS  
CERTIFICATION**

Re: Dkt. Nos. 281, 285, 301

On August 28, 2015, the Court held a hearing on plaintiff's motion for class certification. For the reasons set forth below, the Court DENIES the motion. The Court GRANTS plaintiffs' request for leave to file a statement of recent decision.

**DISCUSSION**

Now before the Court is plaintiffs' renewed motion for class certification. In an order filed March 23, 2010, this Court originally certified a class of Deloitte's unlicensed accountants. However, in light of the Ninth Circuit's opinion in *Campbell v. PricewaterhouseCoopers, LLP*, 642 F.3d 820 (9th Cir. 2011), this Court granted Deloitte's subsequent motion to decertify in an order filed March 27, 2012. The Ninth Circuit affirmed this Court's decertification order in a memorandum disposition filed October 9, 2014. *Brady v. Deloitte & Touche LLP*, 587 Fed. Appx. 363 (9th Cir. 2014). Plaintiffs now seek to certify a narrowed class of unlicensed accountants, and they contend that certification is supported by authority that post-dates the Court's decertification order, as well as new evidence that was not before the Court in 2012.

1 Plaintiffs seek certification of the following class:

2 [A]ll persons employed by Defendant in California as exempt employees in  
3 Defendant's Audit line of service who worked as a First and/or Second Year Staff  
4 (positions referred to by Defendant at various times as "Audit Assistant" and  
5 "Audit Senior Assistant") at any time within four years of the filing of this  
6 complaint to the conclusion of this action but who were not licensed by the State of  
7 California in the practice of accounting and were not paid overtime for hours  
8 worked in excess of 8 hours in a day or 40 hours in a week.

9 Defendant claims that these unlicensed accountants are exempt under the professional and  
10 administrative exemptions set forth in California Wage Order No. 4-2001. Plaintiffs contend that  
11 the issues of whether the proposed class members are properly classified as exempt can be  
12 litigated on a class wide basis. While defendant has the burden of proof on the merits of its  
13 affirmative defenses, plaintiffs have the burden of proof in regard to satisfying Rule 23. *Marlo v.*  
14 *UPS*, 639 F.3d 642, 647 (9th Cir. 2011) (in motion for decertification, although employer has the  
15 burden of proof regarding applicability of wage and hour exemption, the plaintiff "bears the  
16 burden of demonstrating that the requirements of Rules 23(a) and (b) are met").

17 After careful consideration of the parties' arguments and the new evidence submitted by  
18 plaintiffs, the Court concludes that plaintiffs have not demonstrated that common issues  
19 predominate. The Court agrees with plaintiffs that whether Deloitte's requirements for class  
20 member positions satisfy the specialized knowledge requirement of the learned professions prong  
21 of the professional exemption can be litigated on a class-wide basis. However, for the same  
22 reasons articulated in the decertification order, plaintiffs have not shown that the balance of the  
23 professional exemption analysis is amenable to common proof. To the extent that the factfinder is  
24 required to analyze the job duties and work performed by class members to determine whether  
25 they are apprentices and/or trainees, the record before the Court shows, as it did when the Court  
26 granted defendant's motion for decertification, that there is wide variation in the job duties and  
27 work experiences of class members.

1 With regard to the administrative exemption, plaintiffs cite, *inter alia*, the same Deloitte  
2 policies, professional standards and statutes that the Court addressed in the decertification order.  
3 Plaintiffs assert that these policies, standards and statutes preclude class members from engaging  
4 in work that is qualitatively administrative. However, while those policies and rules prevent class  
5 members from performing specific tasks such as signing engagement letters, they do not  
6 necessarily preclude class members from engaging in work that is "directly related to management  
7 policies or general business operations of his/her employer" or its customers. Wage Order 4-2001,  
8 1(A)(2)(a)(i). Plaintiffs also assert, citing these same policies and rules as well as *Harris v.*  
9 *Superior Court*, 53 Cal. 4th 170, 182 (2011), that all class members are prevented from  
10 performing administrative work because they do not "advise" management. However, *Harris* did  
11 not hold that "advising" management was necessary for the administrative exemption to apply.  
12 *See id.* (stating "administrative operations include work done by 'white collar' employees engaged  
13 in servicing a business. Such servicing *may* include, as potentially relevant here, advising  
14 management, planning, negotiating, and representing the company.") (emphasis added). Finally,  
15 the evidence before the Court shows that class members are subject to differing degrees of  
16 supervision and exercise varying degrees of discretion and independent judgment, factors that are  
17 relevant to both exemptions.  
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20 For the foregoing reasons, the Court hereby DENIES plaintiffs' motion for class  
21 certification. In light of the disposition of the motion, the Court finds it unnecessary to rule on  
22 defendant's motion to strike the Ueltzen declaration.  
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24 **IT IS SO ORDERED.**

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26 Dated: September 4, 2015



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SUSAN ILLSTON  
United States District Judge